THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 6274 of 1996

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DATED: 04-01-2006

Devarapu Bijli Kumari & 2 others.

..... PETITIONERS

AND

The Authorized Officer,

Land Reforms Tribunal,
Bandar & 2 others.

.....RESPONDENTS

ORDER:

The relief sought in the petition is "to give a direction, particularly in the nature of a writ of mandamus declaring the action of the respondents in surrendering land in CC.1345/V/1975 on the file of the first respondent and taking delivery of any land including any proceeding or creating record purporting to obtain delivery and grant of pattas in respect of lands in the above case as illegal, null and void and for a consequential direction to the respondents to dispose of the objection petitions filed by the petitioners as per law and drop all further proceedings in that behalf and pass such other orders as are necessary in the circumstances of the case". 1st respondent in this case is the Authorised Officer, Land Reforms Tribunal, Bandar. 3rd respondent is the Mandal Revenue Officer, Tatlavallur and 2nd respondent is the daughter-in-law of the 3rd petitioner and is the declarant in C.C.No.1345/V/1975 on the file of the Land Reforms Tribunal, Bandar filed under the provisions of the A.P.Land Reforms (Ceiling and Agricultural holdings) Act, 1973 (the Act).

2. The affidavit in support of the petition, which is filed by two married daughters and

the mother-in-law of the declarant, is sworn to by Annapurna, W/o Purushothamarao, i.e., the mother-in-law of the declarant. She alleged that her husband-Purushothamarao and son-Gopalarao partitioned their joint family properties under a registered partition deed dated 20-02-1955 and that her husband died on 10-02-1961 and had executed a registered Will dated
19-06-1959 making certain bequests and that her son who begot three daughters and one son died on 11-04-1965 after executing a Will dated 07-04-1965 making several bequests, and as all her properties and interests are being looked after by her daughter-in-law i.e., 2nd respondent (declarant) she and her two grand daughters (who are petitioners 1 and 2 in this petition) did not take personal interest in the declaration filed by the 2nd respondent and as she came to know that 2nd respondent did not properly conduct the case, an application was filed before the appellate Tribunal about three days prior to filing of the writ petition, and as there is a rumor in the village that lands are surrendered by the
2nd respondent and that the Mandal Revenue Officer (third respondent) is about to take possession of those lands and distribute them to the poor, they are advised to file a petition before the Land Reforms Tribunal to consider her objection and determine the holding of the 2nd respondent as per law, and since there is no other alternative remedy except to invoke the jurisdiction of this Court under Article 226 of the Constitution of India this petition is filed for the relief sought.

3. Along with the petition petitioners filed W.P.M.P.No.7726 of 1996 seeking stay of all further proceedings in C.C.1345/V/1975 on the file of the Land Ceilings Tribunal including delivery of possession or interference with their possession of the land and obtained interim stay of all further proceedings in the said C.C.

4. Though the Writ Petition is filed in 1996 no counter affidavit is filed by any of the respondents.

5. The contention of the learned counsel for the petitioners is that since 2nd respondent did not take steps to protect the rights of the petitioners before the Tribunals under the Act, they filed an application before the appellate authority, and

in spite of the pendency of the said application since authorities concerned are trying to take delivery of the lands proposed to be surrendered by the 2nd respondent, a direction may be given to the authorities under the Act to dispose of the petition filed by the petitioners expeditiously, before taking any further proceedings in the surrender proceedings in pursuance of the declaration filed by the 2nd respondent.

6. In para 8 of the order dated 04-11-1994 of LRA.176 of 1994, filed as a material paper along with the petition it is stated:

> *"From the proceedings right through it would disclose that the declarant is repeatedly filing either appeal or revision, calculating the Standing Holdings minutely, and even the deduction of a fraction of 1/4th is not being agreed to. Though the declarant is admittedly holding some land in excess not being agreed to surrender".*

So, *prima facie*, the contention of the petitioners that

2nd respondent did not take care to put forth the case properly has no force. Moreover the contention that 2nd respondent, who is no other than the mother of petitioners 1 and 2, and the daughter-in-law of the third petitioner, is trying to harm their interest, obviously is made for the purpose of this petition with a view to obtain stay of all further proceedings in the Tribunal, and enjoy the land for as long a time as possible, because no reasons are mentioned in the affidavit filed in support of this petition for the 2nd respondent (declarant) causing harm to them.

7. The averments in the affidavit filed in support of the application show that petitioners filed an application before the appellate Authority. As per Section 10 of the Act and Rule 7 of the Rules framed under the Act, a notice has to be published on the surrender proceedings received and objections have to be heard by the Tribunal concerned. Therefore petitioners, if they felt aggrieved by the action of the 2nd respondent, as alleged by them, should have approached the primary Tribunal i.e., Land Reforms Tribunal, but not the appellate authority, because the appellate authority has no original jurisdiction to entertain a petition in respect of surrender proceedings.

8. Since the averment in paragraph.4 of the affidavit filed in support of this application reads:

> *"We also are entitled to raise all objections in the surrendering proceedings. We are advised to file a detailed petition before the first respondent to consider our objections and determine the holding of the second respondent as per law and as per earlier orders of the tribunal. We are also entitled to get the mistakes rectified by filing a petition. Meanwhile we apprehend that possession of the lands may be taken at any time and the third respondent may create records relating to delivery of possession and also distribution of parties and our rights will be seriously affected. Hence the urgency".*

It is clear that petitioners even without moving the primary Tribunal i.e., Land Reforms Tribunal, had by filing a petition before the appellate Tribunal about three days prior to the filing of this petition, came to this Court, making some unfounded allegations against the 2nd respondent, probably with a view to gain sympathy from the Court. Significantly it is not even stated whether an application seeking stay of further proceedings was filed along with the petition for reconsideration or not.

9 . Strangely petitioners even without seeking relief of stay from the Tribunals constituted under the Act, approached this Court invoking its jurisdiction under Article 226 of the Constitution of India seeking stay of further proceedings in the Tribunal, which is but an abuse of the process of Court.

10. The contention of the learned counsel for the petitioners is that since the respondents did not file counter affidavit traversing the allegations made in the affidavit of the third petitioner, the allegations in the affidavit of the third petitioner should be taken to be true. Failure to file a counter affidavit *per se* does not amount to admissions of the facts mentioned in the affidavit filed in support of the petition. Even assuming that the allegation in para 4 of the affidavit of the 3rd petitioner that an objection petition was filed before the appellate Tribunal and that the 2nd respondent did not take proper care in the conduct of the case before the Tribunals under the Act is true, as stated above the remedy is not by way of filing a writ petition for the alleged failure of the 2nd respondent to protect their interest, because this Court while acting under Article 226 of the Constitution of India does not redress the grievance between private individuals. If either the 2nd respondent failed to protect

the interest of the petitioners, or if the appellate Tribunal committed an error in computing the holding of the 2nd respondent, petitioners have to seek redressal of their grievance before the Tribunals concerned only but not in this Court and so this petition deserves to be dismissed with exemplary costs, and since no counter affidavit is filed by the 1st and 3rd respondents, I direct the petitioners to deposit Rs.5000/- (rupees five thousand only) to the credit of the Chief Justice Relief Fund for filing this vexatious petition. Copy of this order be marked to the Registrar (Judicial) to enable execution of the order for payment in C.J. Relief Fund in case of default by the petitioners.

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(C.Y.SOMAYAJULU,J)

4th January, 2006

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